

1 THE HONORABLE JAMAL N. WHITEHEAD

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6
7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SCOTT CARLSON, TYLER PARNELL,
11 BRIAN ROBILLARD ALISON
12 HALLIFAX, SHARON L. DAVIS,
13 MATTHEW PETERSON, ARTEM
14 TETERIN, JOSH FREI,

15 Plaintiffs,

16 vs.

17 CITY OF REDMOND,

18 Defendant.

No. 2:22-cv-01739 JNW

~~[PROPOSED]~~
**STIPULATED PROTECTIVE
ORDER**

19 1. PURPOSES AND LIMITATIONS

20 Discovery in this action is likely to involve production of confidential, proprietary, or
21 private information for which special protection may be warranted. Accordingly, the parties hereby
22 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
23 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
24 protection on all disclosures or responses to discovery, the protection it affords from public
25 disclosure and use extends only to the limited information or items that are entitled to confidential
26 treatment under the applicable legal principles, and it does not presumptively entitle parties to file

1 confidential information under seal.

2 2. “CONFIDENTIAL” MATERIAL

3 “Confidential” material shall include the following documents and tangible things
4 produced or otherwise exchanged: medical information and records, third-party employee
5 religious beliefs or affiliations, and other private information relating to past or current employees.

6 3. SCOPE

7 The protections conferred by this agreement cover not only confidential material (as
8 defined above), but also (1) any information copied or extracted from confidential material; (2) all
9 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
10 conversations, or presentations by parties or their counsel that might reveal confidential material.

11 However, the protections conferred by this agreement do not cover information that is in
12 the public domain or becomes part of the public domain through trial or otherwise.

13 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

14 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
15 or produced by another party or by a non-party in connection with this case only for prosecuting,
16 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
17 categories of persons and under the conditions described in this agreement. Confidential material
18 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
19 that access is limited to the persons authorized under this agreement.

20 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
21 by the court or permitted in writing by the designating party, a receiving party may disclose any
22 confidential material only to:

23 (a) the receiving party’s counsel of record in this action, as well as employees
24 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

25 (b) the officers, directors, and employees (including in house counsel) of the
26 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties

1 agree that a particular document or material produced is for Attorney's Eyes Only and is so
2 designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for this
4 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

5 (d) the court, court personnel, and court reporters and their staff;

6 (e) copy or imaging services retained by counsel to assist in the duplication of
7 confidential material, provided that counsel for the party retaining the copy or imaging service
8 instructs the service not to disclose any confidential material to third parties and to immediately
9 return all originals and copies of any confidential material;

10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
12 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
13 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
14 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
15 under this agreement;

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 (h) Mediators or other Alternative Dispute Resolution neutrals (including their
19 employees, agents and contractors) to whom disclosure is reasonably necessary for this litigation,
20 only after being informed of the provisions of this Stipulated Protective Order and agreeing to
21 abide by its terms; and

22 (i) any other person that the Designating Party agrees to in writing, or as may
23 be ordered by the Court.

24 4.3 Filing Confidential Material. Before filing confidential material or discussing or
25 referencing such material in court filings, the filing party shall confer with the designating party,
26 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will

1 remove the confidential designation, whether the document can be redacted, or whether a motion
2 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
3 designating party must identify the basis for sealing the specific confidential information at issue,
4 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
5 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
6 the standards that will be applied when a party seeks permission from the court to file material
7 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
8 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
9 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
10 the strong presumption of public access to the Court's files.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
13 or non-party that designates information or items for protection under this agreement must take
14 care to limit any such designation to specific material that qualifies under the appropriate
15 standards. The designating party must designate for protection only those parts of material,
16 documents, items, or oral or written communications that qualify, so that other portions of the
17 material, documents, items, or communications for which protection is not warranted are not swept
18 unjustifiably within the ambit of this agreement.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
20 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
21 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
22 and burdens on other parties) expose the designating party to sanctions.

23 If it comes to a designating party's attention that information or items that it designated for
24 protection do not qualify for protection, the designating party must promptly notify all other parties
25 that it is withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this

1 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
2 ordered, disclosure or discovery material that qualifies for protection under this agreement must
3 be clearly so designated before or when the material is disclosed or produced.

4 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
5 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
6 the designating party must affix the word “CONFIDENTIAL” to each page that contains
7 confidential material. If only a portion or portions of the material on a page qualifies for protection,
8 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
9 markings in the margins).

10 (b) Testimony given in deposition or in other pretrial proceedings: the parties
11 and any participating non-parties must identify on the record, during the deposition or other pretrial
12 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
13 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
14 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
15 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
16 at trial, the issue should be addressed during the pre-trial conference.

17 (c) Other tangible items: the producing party must affix in a prominent place
18 on the exterior of the container or containers in which the information or item is stored the word
19 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
20 the producing party, to the extent practicable, shall identify the protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
22 designate qualified information or items does not, standing alone, waive the designating party’s
23 right to secure protection under this agreement for such material. Upon timely correction of a
24 designation, the receiving party must make reasonable efforts to ensure that the material is treated
25 in accordance with the provisions of this agreement.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
2 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
4 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
5 challenge a confidentiality designation by electing not to mount a challenge promptly after the
6 original designation is disclosed.

7 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
8 regarding confidential designations without court involvement. Any motion regarding confidential
9 designations or for a protective order must include a certification, in the motion or in a declaration
10 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
11 affected parties in an effort to resolve the dispute without court action. The certification must list
12 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
13 to-face meeting or a telephone conference.

14 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
15 intervention, the designating party may file and serve a motion to retain confidentiality under Local
16 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The Designating Party
17 shall have forty-five (45) days to file a motion with the Court seeking to uphold any or all
18 designations. The forty-five days will be measured from the date the parties each agree that meet
19 and confer efforts are stalled, or forty-five days from the designating party's last correspondence
20 on the matter if the non-designating party does not provide a response. The parties shall act in good
21 faith in agreeing to the date when meet and confer efforts have ended. The burden of persuasion
22 in any such motion shall be on the designating party. Frivolous challenges, and those made for an
23 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties)
24 may expose the challenging party to sanctions. All parties shall continue to maintain the material
25 in question as confidential until the court rules on the challenge. In the event the Designating Party
26 fails to file a motion with the Court within the forty-five days, then such challenged documents,

1 testimony, or information shall be de-designated. Nothing herein precludes the Designating Party
2 from seeking relief in Court from such de-designation.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
7 must:

8 (a) promptly notify the designating party in writing and include a copy of the
9 subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to
11 issue in the other litigation that some or all of the material covered by the subpoena or order is
12 subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by
14 the designating party whose confidential material may be affected.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
17 material to any person or in any circumstance not authorized under this agreement, the receiving
18 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
19 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
20 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
21 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
22 Bound” that is attached hereto as Exhibit A.

23 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
24 MATERIAL

25 When a producing party gives notice to receiving parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
2 is not intended to modify whatever procedure may be established in an e-discovery order or
3 agreement that provides for production without prior privilege review. The parties agree to the
4 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 10. NON TERMINATION AND RETURN OF DOCUMENTS

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all confidential material to the producing party, including all copies, extracts and
8 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
12 product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a
14 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD, this 3rd th day of
2 October, 2024.

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Attorneys for Defendant

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14 PURSUANT TO STIPULATION, IT IS SO ORDERED

15 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
16 documents, electronically stored information (ESI) or information, whether inadvertent or
17 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
18 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
19 documents, including the attorney-client privilege, attorney work-product protection, or any other
20 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
21 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
22 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
23 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
24 segregation of privileged and/or protected information before production. Information produced
25 in discovery that is protected as privileged or work product shall be immediately returned to the
26

1 producing party.

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3 DATED: October 7, 2024


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5 _____
6 Jamal N. Whitehead
7 United States District Court Judge
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in the
 case of *Carlson, et al. v. City of Redmond*, No. 2:22-cv-01739. I agree to comply with and to be
 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that is subject to
 this Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____